

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

IN RE: DIGITEK PRODUCT LIABILITY LITIGATION

----- MDL NO. 1968

THIS DOCUMENT RELATES TO  
DOROTHY SHARP v. ACTAVIS TOTOWA, LLC, *et al.*  
CASE NO. 2:10-0413

**ORDER**

Pending are (1) the unopposed motion for distribution of plaintiff's counsel's fees and costs out of plaintiff's settlement allocation [Docket 17] filed in the individual case 2:10-cv-00413, and (2) the defendants' motion for an order to show cause why the plaintiff's claims should not be terminated [Docket 621] filed in the main case 2:08-md-1968.

On August 19, 2008, the plaintiff, Dorothy Sharp, retained Levin, Papantonio, Thomas, Mitchell, Echsner & Proctor, P.A. ("Levin Papantonio") to represent her in this action. On March 5, 2010, Levin Papantonio associated with Morgan & Morgan, P.A., and one of its lawyers, Michael Goetz, to aid in the representation of Ms. Sharp. In September 2010, the parties reached a settlement.

Mr. Goetz submitted Ms. Sharp's claim package as required under the Settlement Agreement. Based upon the package, the Special Master concluded that Ms. Sharp qualified for the settlement and awarded her 100 points toward her settlement value, resulting in a gross settlement amount of \$5,701.00. The final step in the process required Ms. Sharp to execute release and dismissal documents.

Mr. Goetz asserts that, despite his "best and repeated" efforts, he has been unable to contact Ms. Sharp at any of her known addresses or telephone numbers since the time of

settlement. (Mot. at 2). He further says that he has documented sixty (60) unsuccessful attempts to contact her in order to secure her signature on the final documents. Mr. Goetz has otherwise complied with all of his obligations under the Settlement Agreement in representing Ms. Sharp. Morgan & Morgan and Levin Papantonio assert that they are owed \$3,245.32 for fees and expenses arising out of their prosecution of this case on Ms. Sharp's behalf. Based upon Ms. Sharp's apparent uncooperativeness, the defendants have moved to terminate her claim, with the balance of the settlement proceeds to be returned to defendant Actavis.

Neither Mr. Goetz' motion nor the defendants' motion reflects service upon Ms. Sharp at any of her known addresses. In order to assure that the best practicable methods have been used to notify Ms. Sharp of the motions, and in a final attempt to gain her input and cooperation, I **ORDER** as follows:

1. That Mr. Goetz, no later than March 13, 2013, send copies of his motion, the defendants' motion, and this order to Ms. Sharp at all of her last known addresses by certified mail, return-receipt requested, setting forth on the envelope the phrase "TIME SENSITIVE -- IMPORTANT SETTLEMENT INFORMATION FROM THE COURT ENCLOSED;"
2. That Ms. Sharp be given until March 22, 2013, to contact the court at 304-347-3192 or Mr. Goetz at (813)-223-5505 concerning this matter; and
3. That in the event Ms. Sharp fails to contact counsel or the court as directed, Levin Papantonio and Morgan & Morgan may tender no later than April 5, 2013, a proposed agreed order signed by their representatives and counsel for the defendants, granting the relief sought in their respective motions.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party. This order may be accessed through the CM/ECF system or the court's website at [www.wvsd.uscourts.gov](http://www.wvsd.uscourts.gov).

ENTER: March 6, 2013



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JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE